

COMMENTS OF THE NATIONAL ASSOCIATION OF HOME BUILDERS TO SENATOR  
CHARLES GRASSLEY, CHAIRMAN OF THE SENATE COMMITTEE ON FINANCE,  
AND SENATOR MAX BAUCUS, RANKING MEMBER, ON S. 1447, THE *TAX  
TECHNICAL CORRECTIONS ACT OF 2005*

AUGUST 31, 2005

Thank you for the opportunity to submit comments presenting the views of the National Association of Home Builders (NAHB) on S. 1447, the *Tax Technical Corrections Act of 2005*, and the impact the legislation may have on homeowners and the home building industry. NAHB represents more than 220,000 member firms involved in home building, remodeling, multifamily construction, property management, housing finance, building product manufacturing and other aspects of residential and light commercial construction. The success of the home building industry and the benefits of homeownership have been clearly evident in recent years with the housing sector continuing to be an engine of economic growth.

In 2004, in response to World Trade Organization rulings that declared the foreign sales corporation (FSC) regime and the extraterritorial income (ETI) regime prohibited export subsidies, Congress enacted the *American Jobs Creation Act of 2004*. The *American Jobs Creation Act* replaced the FSC/ETI regimes with new tax provisions to aid domestic manufacturers. By reducing the tax burden on domestic manufacturers, the *American Jobs Creation Act* sought to improve the cash flow of domestic manufacturers and increase investment in domestic manufacturing.

The *American Jobs Creation Act* created a new deduction for domestic production activities, which is limited to fifty percent of the wages (i.e. wages reported on Form W-2) paid by the taxpayer. Included in the definition of “qualified production activities income” was domestic production gross receipts generated from construction activities performed in the United States. For this purpose, construction activities are activities directly related to the erection of residential and commercial buildings and infrastructure, including substantial renovation. The new deduction will be a real tax benefit for most home builders and, because the deduction is calculated using wages paid, could represent a substantial deduction for home builders who have a significant number of employees. The deduction will help home builders maintain their role as an engine of economic growth by offsetting some of the escalating costs of developing and constructing a home. For homeowners and potential new home buyers, the deduction will help reduce the cost of owning a new home.

Inevitably, major tax legislation requires technical corrections to ensure the implementation of the new law reflects the intent of the Congressional authors, and the *American Jobs Creation Act of 2004* is no exception. S. 1447, the *Tax Technical Corrections Act of 2005*, contains technical corrections with respect to the *American Jobs Creation Act*.

The construction of a home, or any structure, begins with the improvement of raw land. Many of NAHB's members purchase land and later sell the land to another builder to complete the final phase of construction. Under the proposal contained in Section 2(a)(6) of S. 1447, any income derived from the passive holding of land would be excluded from "domestic production gross receipts" for the purpose of computing the domestic production deduction. This exclusion is unfair and unnecessarily burdensome to home builders.

Excluding land holdings, the raw material on which home construction depends, is unfair to businesses whose livelihood depends upon land acquisition as the basis for their construction activities. Excluding gross receipts derived from the lease, rental, license, sale, exchange or other disposition of land, fails to recognize the true costs, and business, of constructing a home. The passive holding of land is a legitimate business activity and represents a small portion of the income of a home builder. By far, home builders earn the largest part of their income from the construction and sale of homes, an approved activity under the *American Jobs Creation Act*, not from the buying and selling of land. NAHB believes that this reality makes the exclusion unnecessary.

Further, excluding the lease, rental, license, sale, exchange or other disposition of land would require an overly burdensome accounting of gross receipts; complex calculations attempting to divine permitted construction activities from excluded passive land holdings. A large percentage of the 70,000 builder members of NAHB would be required to create land values for each parcel of land in their inventories. For NAHB's members, the majority of which are small businesses and who build only a few homes each year, the information required to identify and separate the gross receipts of a permitted construction activity and an excluded passive land holding is burdensome. For our large-volume members, which potentially have thousands of transactions each year, these calculations are complex and the costs are enormous.

Given the small percentage of gross receipts that home builders derive from passive land holdings and the overly burdensome requirements of computing passive land holdings, NAHB urges you to eliminate the proposed exclusion for the lease, rental, license, sale, exchange or other disposition of land.

Again, thank you for the opportunity to comment on S. 1447, the *Tax Technical Corrections Act of 2005*. NAHB looks forward to working with you and the members of the Senate Committee on Finance as you continue to develop legislation designed to ensure that the new domestic manufacturing deduction reflects your intent.